

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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FIRST AMERICAN TITLE	:	CASE NO. 2:15-cv-00229
INSURANCE COMPANY and		
FIRST AMERICAN TITLE	:	
COMPANY, LLC,		
	:	
Plaintiffs,	:	DEPOSITION OF:
	:	<u>KURT AARON ANDREWSSEN</u>
v.		
	:	TAKEN: SEPTEMBER 3, 2015
NORTHWEST TITLE		
INSURANCE AGENCY, LLC;	:	JUDGE DAVID NUFFER
MICHAEL SMITH; JEFF		
WILLIAMS; AND KRISTI	:	
CARRELL,		
	:	
Defendants.	:	
-----	:	

**THIS TRANSCRIPT CONTAINS TESTIMONY MARKED
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Deposition of KURT AARON ANDREWSSEN, taken on
behalf of the defendants, at 60 East South Temple,
Suite 500, Salt Lake City, Utah, before TAMERA
STEPHENS, RPR, CRR, CSR, Reporter for the State of
Utah, pursuant to Notice.

1 Q In connection with your responsibilities for
2 human resource in Utah, were you responsible for
3 employees signing noncompete agreements?

4 A Yes.

09:17:18 5 Q And what level of employee was required to sign
6 a noncompete?

7 A We didn't have a policy based on level.

8 Q What was your policy based on?

9 A Based on individual circumstance and the facts
09:17:34 10 surrounding it.

11 Q What were the circumstances and the facts that
12 would require you to call -- require someone to sign a
13 noncompete?

14 A Each case is different. For example, an
09:17:56 15 employee might want a pay raise, and as consideration
16 for a pay raise, they might sign a noncompete.

17 Q Just because they got a pay raise?

18 A No. It would be a special circumstance where
19 they are seeking something outside of the norm of our
09:18:17 20 normal practices for pay raises.

21 Q Okay. So you never looked at the job
22 responsibilities as a criteria for when you had somebody
23 sign a noncompete; is that correct?

24 A No.

09:18:27 25 MR. McLAUGHLIN: Objection to form.

1 Q (BY MS. WOOD) What's incorrect about what I
2 said?

3 A Well, you are making an assumption that based
4 on my statement, we didn't look at that. I mean, I said
09:18:38 5 it depends because multiple criteria. What was their
6 job? What was their responsibilities? Were they an
7 escrow officer? Were they a salesperson? Were they a
8 manager? Were they in a position where they controlled
9 client lists and other items of significance for the
09:18:58 10 company, or were they a receptionist that just answered
11 phones? I mean, we did weigh that in our
12 decision-making process.

13 Q Okay. So what employees were responsible for
14 customer lists?

09:19:11 15 A Every employee to a certain extent.

16 Q Does FATCO have an official customer list?

17 A Yes.

18 Q And what is that called?

19 A The GAB or global address book.

09:19:28 20 Q And how does an employee obtain a copy of
21 the -- is it the GAB?

22 A They have access to it through our FAST
23 software.

24 Q Okay. Any employee has access to it through
09:19:49 25 your FAST software?

1 A Rights are limited, but they have access to
2 their portion for their branch, for their area, for
3 their customers.

4 Q Okay. Did you require all employees who had
09:20:10 5 access to the GAB to sign noncompetes?

6 A No.

7 Q Did you require all escrow employees to sign
8 noncompetes?

9 A No.

09:20:24 10 Q Did you require all sales managers to sign
11 noncompetes?

12 A No.

13 Q So there is no title in the company that
14 automatically would require a noncompete?

09:20:41 15 A Not to my knowledge.

16 Q Do you have a noncompete?

17 A I do not.

18 Q Did you have a noncompete when you were
19 regional director of human resources?

09:20:55 20 A I did not.

21 Q Have you ever had a noncompete?

22 A No.

23 Q How many employees approximately in the state
24 of Utah have noncompetes?

09:21:09 25 MR. McLAUGHLIN: Objection. No foundation.

1 THE WITNESS: I don't know.

2 Q (BY MS. WOOD) So as I understand, there were
3 no criteria for who had to sign a noncompete; is that
4 correct?

09:21:21 5 MR. McLAUGHLIN: Objection to form.

6 THE WITNESS: Not necessarily.

7 Q (BY MS. WOOD) You can't tell me any criteria?

8 MR. McLAUGHLIN: He already has.

9 THE WITNESS: I have --

09:21:36 10 MS. WOOD: That's a speaking objection.
11 I'm sorry.

12 THE WITNESS: I have given you various
13 criteria. What I have told you is each situation is
14 independent and is examined and analyzed as an
09:21:50 15 independent instance, not, "Here's the book. Follow it.
16 This person fits that criteria so give them a
17 noncompete." We don't have that, no.

18 Q (BY MS. WOOD) Okay. And there are no
19 noncompetes in California, are there?

09:22:06 20 MR. McLAUGHLIN: Objection. No foundation.

21 THE WITNESS: I don't know.

22 Q (BY MS. WOOD) How about in Nevada?

23 MR. McLAUGHLIN: Objection. No foundation.

24 THE WITNESS: I don't recall.

09:22:12 25 Q (BY MS. WOOD) How about in Arizona?

1 MR. McLAUGHLIN: Objection. No foundation.

2 THE WITNESS: I don't recall specifics, but I
3 seem to remember yes, we do have a few in Nevada -- or
4 in Arizona.

09:22:28 5 Q (BY MS. WOOD) What do you mean by "a few"?

6 A Less than five. I don't know an exact number.

7 Q And how many do you have in Utah?

8 A I don't know an exact number.

9 Q Approximation.

09:22:45 10 MR. McLAUGHLIN: Objection to form.

11 THE WITNESS: I don't know.

12 Q (BY MS. WOOD) More or less than in Arizona?

13 A More.

14 Q How many employees does FATCO have in Arizona?

09:23:05 15 A I don't know.

16 Q When you were managing human resources in
17 Arizona, how many employees did they have?

18 A It depends. My scope was over direct
19 operations. There are multiple divisions of
09:23:24 20 First American to which I had no access to.

21 Q Okay. Well, how many in direct -- within your
22 scope?

23 A Within my scope? Roughly 300.

24 Q And how many employees in Utah?

09:23:43 25 MR. McLAUGHLIN: Objection to form.

1 THE WITNESS: Since leaving HR, I don't know an
2 exact number.

3 Q (BY MS. WOOD) Well, at the time you were in
4 HR.

09:23:53 5 A We had roughly 160, 170.

6 Q And of that number, you can give me no estimate
7 of the number who had noncompetes?

8 A No.

9 (Exhibit 1 was marked.)

09:24:31 10 Q (BY MS. WOOD) I'm handing you a copy of a
11 document that has been marked as Exhibit 1. Is this
12 confidential business information of FATCO?

13 MR. McLAUGHLIN: Objection. No foundation.

14 THE WITNESS: I have never seen this before.

09:24:53 15 Q (BY MS. WOOD) Is it on the GAB?

16 A No. This is a utilities list.

17 Q Okay. And as part of your human resources
18 duties, you required people to sign confidential
19 information agreements, didn't you?

09:25:14 20 A Yes.

21 Q Is this the type of document you were trying to
22 protect from [verbatim] your confidential information
23 agreement?

24 MR. McLAUGHLIN: Objection. No foundation.

09:25:25 25 THE WITNESS: This isn't a First American

1 Q Okay. Did she ever sign a new contract when
2 she became manager of the Sugarhouse office?

3 A I don't recall.

12:04:29

4 Q Wouldn't you assume that that would be
5 somewhere in her personnel file if she had?

6 A Yes.

7 MR. McLAUGHLIN: Objection to form.

12:04:45

8 Q (BY MS. WOOD) Did she receive the same health,
9 dental, 401(k), disability, and life insurance benefits
10 at FATCO as she had at Equity Title?

11 MR. McLAUGHLIN: Objection. No foundation.

12 THE WITNESS: I don't know.

13 Q (BY MS. WOOD) Well, you know the benefits
14 changed, don't you?

12:04:58

15 A Yeah. So no.

16 Q Now, how many office managers in Equity Title
17 have a noncompete agreement -- I mean at FATCO?

18 MR. McLAUGHLIN: Objection to form. And no
19 foundation.

12:05:16

20 THE WITNESS: I don't know.

21 Q (BY MS. WOOD) In your position as head of
22 human resources for FATCO, did you ever ask an office
23 manager to sign a noncompete?

24 A Yes.

12:05:33

25 Q Who?

1 A I don't recall.

2 Q Under what circumstances?

3 A Usually surrounding some compensation change.

4 Q Okay.

12:05:59 5 A Bonus restructure, something like that.

6 Q Okay. Did that ever happen to Ms. Carrell?

7 A I don't recall.

8 Q Would you consider Ms. Carrell to be a unique,
9 extraordinary, gifted office manager?

12:06:16 10 MR. McLAUGHLIN: Objection to form.

11 THE WITNESS: She was very good.

12 Q (BY MS. WOOD) Was she unique and
13 extraordinary?

14 MR. McLAUGHLIN: Objection to form.

12:06:24 15 THE WITNESS: Depends who you compare her to.

16 Q (BY MS. WOOD) Who would you compare her to?

17 A Other managers in Salt Lake. She was one of
18 the best.

19 Q Was she unique and extraordinary?

12:06:42 20 A No.

21 Q Okay.

22 MR. McLAUGHLIN: Mary Anne, are you done with
23 this one?

24 MS. WOOD: No.

12:07:26 25 THE WITNESS: We are not done with it?